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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,
5 v.

EDNY Docket:
19-cr-127 (PAE-VJ)

6 LUCIO CELLI,

7 Defendant.

Conference

8 -----x
9 New York, N.Y.
10 April 26, 2021
11 2:15 p.m.

12 Before:

13 HON. PAUL A. ENGELMAYER

14 District Judge

15 APPEARANCES

16 AUDREY STRAUSS
17 United States Attorney for the
18 Southern District of New York
19 BY: ANNA KARAMIGIOS
20 JENNIFER SASSO
21 Assistant United States Attorneys

22 BENJAMIN SILVERMAN
23 Attorney for Defendant

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1 (Case called)

2 THE CLERK: Counselors, state your appearance for the
3 record, please.

4 MS. KARAMIGIOS: Anna Karamigios and Anna Sasso for
5 the government. Good afternoon, your Honor.

6 THE COURT: All right. Good afternoon,
7 Ms. Karamigios. Ms. Sasso.

8 MS. SASSO: Good afternoon.

9 MR. SILVERMAN: Good afternoon, your Honor. Benjamin
10 Silverman for Lucio Celli, seated to my left.

11 THE COURT: Good afternoon, Mr. Sasso. Good
12 afternoon, Mr. Celli.

13 And thanks as always to our court reporter.

14 Let me begin just by determining, as I have for the
15 last few conferences, that counsel for each side consent to our
16 holding this proceeding in the Southern District
17 notwithstanding that the case is housed in the Eastern
18 District. Government?

19 MS. KARAMIGIOS: Yes, your Honor.

20 MR. SILVERMAN: Yes.

21 THE COURT: Very good. OK.

22 There are a handful of items I need to take up with
23 you today and I'll just take them up in the following order,
24 beginning with this: I received a letter from you, Mr. Sasso,
25 on April 19, which reads, "Your Honor, I write respectfully to

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1 inform the Court that Mr. Celli would like to withdraw his
2 request to proceed pro se. We thank the Court for its time and
3 its consideration of this matter."

4 Mr. Sasso, thank you for promptly notifying me of
5 that, which was an assistance. I just need to confirm with
6 Mr. Celli that that is in fact his decision.

7 Mr. Celli, I just want to make sure, I received that
8 from your lawyer, but that is in fact your request, to withdraw
9 your application and proceed pro se.

10 THE DEFENDANT: At the present time, yes.

11 THE COURT: OK. Very good.

12 All right. So you've thought about it. You've spoken
13 about it with Mr. Sasso. And you are at this point not seeking
14 to proceed pro se. Correct?

15 THE DEFENDANT: At the present time, yes.

16 THE COURT: That's the only time at which I'm asking.

17 THE DEFENDANT: OK.

18 THE COURT: So the answer is, yes, you are withdrawing
19 the motion.

20 THE DEFENDANT: Yes. I'm sorry. Yes.

21 THE COURT: OK. Very good.

22 OK. Thank you. And I certainly will take the motion
23 as having been withdrawn.

24 Notwithstanding that, having spent, you know, a
25 substantial amount of time with counsel and Mr. Celli and

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1 inquiring of him, as of when I received word from Mr. Silverman
2 that Mr. Celli was withdrawing that motion, I had reached a
3 determination how to rule on the motion, and had very
4 substantially completed my legal analysis of that point, and I
5 think it is worth putting on the record how the Court would
6 have resolved that motion and why, both in the interest of a
7 complete record and in the not inconceivable event that similar
8 issues will arise.

9 Here goes. So I'm going to read aloud a short bench
10 decision. And I'm going to have Mr. Smallman hand a copy to
11 the court reporter.

12 Last month, defendant Luccio Celli made a motion to
13 waive his Sixth Amendment right to counsel and to represent
14 himself in his upcoming trial. That is at docket 124. That
15 motion was the subject of several in-person hearings, after
16 which, on April 19, 2021, Celli withdrew his motion. That is
17 at docket 144. The Court has just now confirmed with Mr. Celli
18 on the record today that his intention to withdraw the motion
19 was knowing and intelligent and the product of consideration.
20 Before being notified of Celli's decision to withdraw the
21 motion, the Court had determined that the motion was properly
22 denied. In the interest of a complete record, the Court will
23 now put on the record, in abbreviated form to be sure, but
24 sufficient to explain my reasons, the bases on which the Court
25 would have denied Celli's motion to represent himself. As with

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1 the recent decision resolving motions in limine, I will not be
2 issuing a written order. So, if the content of what I say is
3 important to you, you will need to order the transcript of this
4 conference.

5 First of all, some background. On March 29, 2021,
6 Benjamin Sasso, Esq., counsel for Celli, filed a letter stating
7 that Celli wanted to represent himself at his upcoming trial.
8 That is, again, at docket 124. Provided that he is competent,
9 a criminal defendant has a Sixth Amendment right to forgo
10 counsel and represent himself, citing *Faretta v. California*,
11 422 U.S. 806, 819–20 (1975). As the Second Circuit has put the
12 point: "A criminal defendant is entitled to proceed pro se if
13 he knowingly, voluntarily, and unequivocally waives his right
14 to appointed counsel." *Wilson v. Walker*, 204 F.3d 33, 37 (2d
15 Cir. 2000).

16 On April 6, 2021, consistent with *Faretta*, the Court
17 conducted a hearing to allocute Celli under oath as to the
18 risks of self-representation and to enable the Court to
19 determine whether Celli's decision to proceed pro se was in
20 fact knowing, voluntary, and unequivocal. As the transcript
21 reflects, the Court questioned Celli at length about relevant
22 matters. And I'll be citing to the transcript, which is
23 docketed now at docket 145.

24 One area of questions involved Celli's experience with
25 self-representation. Celli has represented himself in

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connection with two prior lawsuits. Those were discussed at pages 70 to 76 of the transcript. He acknowledged that he did not prevail in either case. He also acknowledged that his pro se lawyering activities in those cases were limited to filing documents. He did not have occasion in either case to make an oral presentation in court. Neither case, nor either of his prior criminal cases, entailed in-court events, such as evidentiary hearings, the questioning of witnesses, or trial. Citing the transcript at pages 71 and 76 to 78. Celli stated that he has obtained annotated copies of the Federal Rules of Evidence and the Federal Rules of, it appears, Criminal Procedure. But, he stated, he has not read them in full or studied them or obtained instruction as to them. Citing the pages at 68 and 72. The Court engaged in a colloquy with Celli as to the extent of his understanding of these rules. That's at pages 79 to 81. The Court also probed Celli as to other aspects of his legal experience and knowledge. Celli stated that he has never served as a juror, observed jury selection, or attended a criminal trial. Page 78. Nor, he stated, has he ever testified at a proceeding. He acknowledged that he does not know how to call witnesses, or evidence, or subpoena witnesses to testify. That is at page 89.

The Court also allocuted Celli as to the role of the judge at a trial, the benefits of having experienced counsel handling his representation, and including the benefits that

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would be brought to Celli's defense, and the challenges that Celli would face as a defendant in a criminal trial. Pages 81 to 84. The Court confirmed that Celli was aware of the consequences of conviction, including facing a prison sentence and fine and special assessment, and supervised release time that he would face.

Celli stated that he understood that, if he elected to represent himself, in order to present his version of events to the jury in his own words, he would still have to take the stand and testify and expose himself to cross-examination. Celli further stated that he understood various risks of self-representation. These included that jurors might draw adverse inferences or adverse conclusions about him based on his conduct as counsel, that his questioning of witnesses might inadvertently elicit information that might hurt his defense, and that the jury might infer from his questions that he possesses certain information. The Court further explained, and Celli indicated that he understood, that, unlike in the situation where a defendant is counseled at trial, if he were convicted after proceeding pro se, he would not be able to appeal his conviction on the basis of ineffective assistance of counsel. And that whole discussion was covered at pages 90 to 95.

Finally, the Court reviewed three aspects of Celli's case that, in the Court's assessment, made it especially

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1 advisable for Celli to be represented by seasoned counsel.

2 First, the Court noted, insofar as Celli's intent and state of
3 mind in connection with the communications at issue are central
4 elements in this case of alleged threatening communications in
5 violation of 18 U.S.C. § 875(c), a seasoned lawyers dexterity
6 in eliciting state-of-mind evidence and making nuanced
7 arguments about state of mind could assist the defense, whereas
8 Celli's inquiries and statements as to these prior lawsuits
9 might redound to his detriment before the jury.

10 Sorry. One moment.

11 All right. Let me go back a moment, if I may.

12 The first is that a seasoned lawyer's dexterity in
13 eliciting state-of-mind evidence and making nuanced arguments
14 about state of mind might assist the defense, whereas Celli's
15 handling of that might not be so deft.

16 Second, Celli's prior civil lawsuits are a central
17 issue at trial, and the Court expects, as we discussed, to put
18 strict limits on what could be elicited about those lawsuits.
19 Mr. Celli's discussions and questions about those lawsuits
20 could redound to his benefit -- to his detriment, to the extent
21 that he attempted to relitigate those matters or exhibited
22 anger or frustration with respect to those matters.

23 And third, the Court noted that aspects of Celli's
24 conduct and temper, as exhibited in pretrial conferences, could
25 harm his cause before the jury, and were Celli to have a

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1 speaking role at trial as opposed to leaving his representation
2 in the hands of counsel, the jury would be more likely to be
3 exposed to potentially problematic behavior on his part.

4 And that discussion taking those cases into
5 consideration was at pages 97 to 104.

6 After the *Faretta* inquiry, which was conducted in open
7 court in the presence of government counsel, the Court
8 determined that it would be helpful to have an ex parte meeting
9 with Celli and his counsel. The Court's objective was to
10 determine whether Celli's stated desire to represent himself
11 reflected misgivings specific to his current counsel,
12 Mr. Sasso, who is the fourth attorney successively to represent
13 Mr. Celli in this matter. The Court's perception was that
14 Celli's relationship with Mr. Sasso was in fact productive and
15 positive and that Celli's motion to represent himself appeared
16 to derive from his frustration that his counsel could not,
17 consistent with the ethical rules, defend the case in the way
18 that Celli imagined, which would have entailed intensively
19 litigating various underlying grievances of his that largely
20 formed the basis of Celli's prior civil lawsuits. Consistent
21 with that, Celli and Mr. Sasso, at the *Faretta* hearing,
22 confirmed that there had not been a breakdown in their working
23 relationship.

24 And as I said, on April 15, the Court met with Celli
25 and his counsel ex parte. The transcript of that hearing,

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1 insofar as it probed the relationship between the defendant and
2 his counsel, is properly maintained ex parte. As an overview,
3 however, the Court can properly report the following:

4 First, both Celli and Mr. Sasso reported that they
5 enjoy a productive working relationship. There has been no
6 rupture. Second, the impetus for Celli's application to
7 represent himself is substantially, as anticipated, his dismay
8 that counsel have advised him that certain strategies and
9 courses of inquiry that he might like to pursue at trial are
10 precluded by the ethical rules governing counsel and/or the
11 Federal Rules of Evidence. The Court advised Celli that the
12 guidance he has received along those lines is correct and well
13 taken: that the Court in fact would not permit any counsel, or
14 Celli *pro se*, to pursue certain strategies at trial in light of
15 the ethical rules and the rules of evidence. Accordingly, the
16 Court advised Celli, a substitute counsel would not be
17 permitted to litigate the case in the manner that Celli
18 envisioned and Celli would not be permitted to, either. And
19 third, when the Court asked Celli whether he still wanted to
20 give up the significant advantages that Celli would bring to
21 his defense, Celli equivocated. He replied, and I'm quoting
22 the transcript, "I'm hesitating for time....I'm lost for words.
23 Usually I'm not lost for words, but I'm lost for words at this
24 time." And Celli's counsel then aptly noted that *Faretna*
25 requires a clear and unequivocal waiver, and this statement

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1 from Celli appeared to supply uncertainty.

2 So that's the background to the Court's assessment.

3 In light of Mr. Celli's statement at the ex parte
4 proceeding, the Court cannot find that Celli's request, even if
5 it had not been later explicitly withdrawn, is unequivocal.
6 And, again, under *Faretta*, a request for self-representation
7 must be unequivocal. As authority for that proposition, I
8 would cite among other cases *United States v. Barton*, 712 F.3d
9 111, 118 (2d Cir. 2013); *United States v. Barnes*, 693 F.3d 261,
10 271 (2d Cir. 2012); *Wilson*, 204 F.3d at 37; and *Williams v.*
11 *Bartlett*, 44 F.3d 95, 100 (2d Cir. 1994).

12 In any event, of course, Mr. Celli has now withdrawn
13 his request. Mr. Sasso conveyed that in his letter of April
14 19. Mr. Celli confirmed that today. So we have therefore not
15 only an equivocal request, but a withdrawn one. So that aspect
16 of the *Faretta* standard is not met.

17 Even if Mr. Celli had made an unequivocal request, the
18 Court would have denied it. And that is because, on the
19 considerable record that has by now been developed, the Court
20 is unpersuaded that Celli, although competent to stand trial,
21 is competent to waive his right to counsel.

22 As I explained earlier, a criminal defendant has the
23 right to waive his Sixth Amendment right to counsel provided
24 the waiver is knowing, voluntary, and unequivocal. That is
25 *Faretta*, 422 U.S. at 819. However, as the Supreme Court held

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1 in *Indiana v. Edwards*, 554 U.S. 164, 177-78 (2008), judges are
2 not required to permit a criminal defendant to represent
3 himself where he is not competent to do so. Here, two
4 psychologists have found Celli competent to stand trial, and
5 that determination, in the Court's assessment, is clearly
6 correct. However, as the Supreme Court has held, the standard
7 of competency to stand trial with the assistance of an attorney
8 is not necessarily the same as competency to waive the right of
9 counsel and proceed pro se. Citing *Indiana v. Edwards*, 554
10 U.S. at 174-175. Rather, *Indiana* permits the Court to make an
11 independent finding as to whether, here, Celli is competent to
12 represent himself.

13 Pursuant to that line of authority, judges have the
14 discretion to insist that counsel represent the "discrete set
15 of defendants competent to stand trial but incompetent to
16 represent themselves." Citing *United States v. Turner*, 644
17 F.3d 713, 724 (8th Cir. 2011). I believe, and had Celli
18 pursued his application to completion for self-representation I
19 would have held, that Celli falls into this narrow class of
20 defendants. Neither Dr. Rosenfeld nor Dr. Goldsmith diagnosed
21 Celli with a specific mental illness. But Dr. Rosenfeld did
22 conclude that Celli exhibited signs of anxiety, PTSD, and
23 paranoia regarding the legal system in particular. I'm citing
24 the Rosenfeld report, which is at docket 146 at pages 4 to 6.
25 The Court has assessed Celli's conduct before Judge Donnelly

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1 and before this Court in light of these clinical observations.
2 Celli's courtroom conduct reveals, indeed consistently --
3 consistency -- excuse me -- consistently, that in all
4 likelihood as a consequence of these impairments, Celli has
5 serious endemic obstacles impeding his ability to represent
6 himself.

7 First -- I'm going to elaborate -- first, Celli has
8 repeatedly demonstrated a fixation on if not obsession with
9 civil cases, which are of limited probative value in this
10 prosecution for threats to federal judges, and a similar
11 fixation with the conduct and outcome of his 2019 bail hearing,
12 which is of no probative value in this prosecution whatsoever.
13 In that respect, this case is akin to *United States v.*
14 *Nyenekor*, 784 F. App'x 810 (2d Cir. 2019), in which the Second
15 Circuit in a summary order upheld Judge Seibel's decision to
16 deny a defendant's motion to represent himself because his
17 mental illness made him fixate on nonmeritorious legal issues
18 and disrupt courtroom proceedings. *Id.* at 814. The record in
19 this case amply and similarly demonstrates the persistence and
20 severity of Celli's fixation on past perceived wrongs that are
21 ultimately nonissues in this prosecution.

22 Before the transfer of the case to this Court, in fact
23 Judge Donnelly remarked on at least two occasions on Celli's
24 tendency to fixate on things that are not relevant to his case,
25 specifically civil cases. I'm citing docket 102 at page 12 and

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1 docket 75 at pages 3 to 4. That behavior has continued during
2 this Court's supervision of this case. Despite encouragement
3 from the Court and counsel, Celli has repeatedly displayed an
4 inability to focus on his criminal charges and an inability to
5 grasp the very limited context in which his civil cases are
6 relevant here. For example, at various points during the April
7 6 *Farettta* inquiry, Celli became fixated on his civil cases and
8 struggled to refocus himself on the Court's questions. Citing
9 the transcript at pages 69, 101 to 102, and 105 to 107. Celli
10 insisted that his intent in defending himself in the criminal
11 was to seek justice for wrongs purportedly done to him in
12 connection with those civil lawsuits. Citing *id.* at 102.

13 Finally, although Dr. Eric Goldsmith, who examined
14 Celli in March of this year, did not diagnose Celli as
15 schizophrenic or suffering from delusional disorder, in the
16 context of litigation, he concluded, consistent with the prior
17 assessment, that Celli had a tendency to become fixated and
18 confounding. That accords, as I said, with Dr. Rosenfeld's
19 conclusion that Celli exhibited signs of anxiety, PTSD, and
20 paranoia regarding the legal system. To be sure, Dr. Rosenfeld
21 concluded that with respect to his daily life, Celli did not
22 appear to be delusional. But while Celli's impairment may not
23 render him incompetent to stand trial, with the assistance of
24 counsel, an impairment in the context of litigation is
25 precisely what leads this Court to conclude that Celli is not

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1 competent to play the "significantly expanded role required for
2 self-representation even if he can play the lesser role of
3 represented defendant." Citing the Supreme Court's decision in
4 *Edwards*, 554 U.S. at 176. I honestly do not believe and cannot
5 conclude that, without the benefit of counsel, Celli will be
6 able to focus at trial on defending against the criminal
7 charges against him. His track record demonstrates that,
8 consistent with the above diagnoses, he will instead fixate on
9 attempting to relitigate his civil cases and perhaps his 2019
10 bail hearing. Were Celli responsible for conducting this
11 defense, his fixation on past civil grievances would stand to
12 gravely undermine his ability to organize his defense, make
13 motions, question witnesses, present admissible evidence,
14 conduct voir dire, and defend, in jury argument, the
15 proposition that the proof at trial does not establish his
16 guilt beyond a reasonable doubt.

17 Celli's recent pro se submission in this case
18 powerfully underscores this conclusion that he is mentally
19 fixated on largely irrelevant grievances. Celli's March 22,
20 2021 pro se submission in support of a continuance begins with
21 a disorganized, 15-page letter, ten pages of which are
22 dedicated to the wrongs allegedly perpetrated against him by
23 the plaintiff in one of his civil cases. See Dkt. 123. The
24 remaining pages accuse judges, AUSAs, former attorneys for
25 Celli, and other unknown individuals of various crimes. None

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of these allegations are relevant in the slightest to whether a continuance of the trial date is appropriate.

That concludes the Court's discussion of the first consideration supporting the finding under *Indiana v. Edwards* that Celli is not competent to represent himself.

Second, Celli has periodically demonstrated inability behaving himself in conferences and hearings. That has been a persistent problem in this case. Judge Donnelly remarked at various points upon Celli's tendency to react poorly and become upset when his lawyers were unwilling or unable to take certain acts on his behalf and that he has yelled and screamed during conferences. See Dkt. 75 at 3-4; Dkt. 76 at 5. This Court has observed similar outbursts. Although Dr. Goldsmith concluded that Celli understands that courtroom misconduct may lead to the revocation of his ability to proceed pro se, Dr. Rosenfeld suggested that he had doubts about Celli's ability to comport himself in the courtroom consistent with that precept. Citing Rosenfeld report at page 5. Dr. Rosenfeld suggested that Chile's physicians have proven able to help him regain control of his emotions. See *id.* at 6. But his physicians would not be alongside him at the podium when he questioned witnesses, made arguments to the Court, or addressed the jury. And despite being counseled during the pretrial phases of this case by a series of very capable lawyers, Celli's outbursts have continued. This Court has had to admonish Celli on multiple

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1 occasions to temper his anger and focus his remarks on relevant
2 subject matter. This behavior further underscores the
3 importance of counsel, not Celli, being responsible for Celli's
4 defense. To be sure, Celli's present counsel appears to have
5 had a salubrious effect on Celli. It is clear that Celli
6 respects his current counsel's strategic insights and conduct
7 of the defense. But I am not confident that Celli would be
8 able to regain control of his remotions at trial if left to his
9 own devices. The risk that outbursts, irrelevant tirades, or
10 other misconduct -- on a level that could prejudice Celli
11 before the jury or even lead to his removal from the
12 courtroom -- is, in this Court's judgment, palpably higher were
13 Celli to proceed pro se.

14 So, for these reasons, had Celli not abandoned his
15 application to proceed pro se, I would have found Celli not
16 competent to waive his Sixth Amendment right to counsel. I
17 would have found Celli's mental impairments to be severe enough
18 to place him in that "discrete set" of defendants who, although
19 competent to stand trial, are not competent to elect to
20 represent themselves.

21 And therein ends the ruling.

22 All right. That's the first order of business I have
23 for you today. The second involves an evidentiary issue. I
24 had asked counsel to come together to discuss the specific
25 parameters with respect to the introduction of evidence

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1 vis-a-vis the civil case, and I have had a motion in limine
2 that at a macro level ruled on this point but left some of the
3 short strokes to counsel. Let me ask you, Ms. Karamigios, is
4 that something that counsel made progress with?

5 MS. KARAMIGIOS: Your Honor, with apologies, given
6 what's going on, we have not been able to discuss that yet, but
7 we will endeavor to do so as soon as is possible.

8 THE COURT: Mr. Silverman, is that correct?

9 MR. SILVERMAN: That's correct. It's my anticipation
10 that we will confer over the next week and submit letters to
11 the Court on May 3rd. But we have not nailed down the
12 parameters yet.

13 THE COURT: OK. Look, I mean, again, I welcome your
14 nailing down that which you can and specifying the areas where
15 you can't so that at least I can offer you a ruling. I've
16 given you directional guidance, but it seemed better to put in
17 counsel's hands in the first instance the ability to agree or
18 disagree and to identify areas of disagreement. So please do
19 get me something, because I am eager to give you guidance. I
20 want you to be able to open and guide your witnesses, mindful
21 of the ground rules, and I want to be in a position where I can
22 set ground rules for you beforehand, so that you can plan for
23 trial. My goal is for counsel never to have surprises at
24 trial, at least from the Court. So the more guidance I can
25 give you, it's better for everyone.

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1 All right. The next issue which I regret to take up
2 is as follows: Earlier today, I received a memorandum from the
3 Pretrial Services agency, specifically from Pretrial Services
4 Officer Ramel Moore, dated today, which recounted an incident
5 in which, as reported in the memorandum, Mr. Celli violated his
6 conditions of release. Specifically, the memorandum reports
7 that on April 23rd, Mr. Celli contacted AUSA Karamigios to
8 obtain her fax number. And the details of the exchange are set
9 out in the memo, and we will file the memo -- we'll arrange for
10 its filing under seal. But the thrust of it is that the caller
11 called from a particular fax number on the afternoon of April
12 23rd. The caller identified himself as John Smith. The caller
13 requested her fax number. AUSA Karamigios declined to provide
14 the fax number and disconnected the call. She identified the
15 caller as the defendant based on her previous conversations
16 with him. And according to the memorandum, the pretrial
17 officer of the Southern District who is responsible for
18 Mr. Celli's supervision, Leo Barrios, confirmed that the fax
19 number -- the phone number, rather -- that AUSA Karamigios
20 recorded as associated with the caller belonged to the
21 defendant's mother, Fernanda Celli, who serves as the
22 defendant's third-party custodian.

23 I spoke briefly shortly before the conference to both
24 Pretrial Services officers, both Officer Moore and Officer
25 Barrios. Officer Moore has not had contact with Celli about

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1 this incident. Officer Barrios has recounted essentially the
2 events similar to the way that the memorandum does, but stated
3 that, in the context of his conversation with Mr. Celli,
4 Mr. Celli both did not deny what had happened and said, or said
5 in substance, that he had done it, i.e., that he had been the
6 person to have had the call in question with AUSA Karamigios.

7 I note that the Pretrial Services office is
8 recommending that Mr. Celli's bond be revoked, quote, in that
9 his continued noncompliance while under pretrial
10 supervision" -- the memorandum reads, in relevant part, "This
11 is the ninth violation memorandum Pretrial Services has
12 submitted to the Court regarding the defendant's noncompliance
13 since commencing supervision on March 29, 2019. Pretrial
14 Services is highly concerned about the incident on April 23,
15 2021, as the defendant deliberately attempted to evade
16 identification by using an alias name. The defendant has been
17 referred to all necessary services, i.e. mental health and
18 substance abuse treatment, to mitigate his illegal drug use and
19 mental health concerns while under supervision.
20 Notwithstanding, he is under the most restrictive pretrial
21 conditions that can be imposed by the Court and has been given
22 numerous opportunities to comply with the conditions of
23 release, yet he continues to violate the former."

24 And the memo goes on just to reflect the request for
25 revocation and to state that the memo was being furnished to

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1 counsel for both sides. I first received the memo, as I said,
2 you know, about an hour to an hour and a half before this
3 conference. Let me confirm, just first, that each counsel
4 received the memo. AUSA Karamigios?

5 MS. KARAMIGIOS: Yes, I did, your Honor.

6 THE COURT: Mr. Silverman.

7 MR. SILVERMAN: Yes, your Honor, approximately an hour
8 before we started.

9 THE COURT: All right. I think I have no choice but
10 to inquire of counsel as to their views. Government?

11 MS. KARAMIGIOS: Your Honor?

12 THE COURT: Yes.

13 MS. KARAMIGIOS: May I just clarify one of the
14 statements in the pretrial officer's report?

15 THE COURT: Sure. You're in an unusual position as to
16 this discreet episode of a fact witness. Yes, you may.

17 MS. KARAMIGIOS: The recitation is largely accurate.
18 I would just like to clarify that I didn't identify his voice
19 based on any past conversations. I had never had any
20 conversations with Mr. Celli before. What I did -- I suspected
21 that it was him just based on the nature of the phone call, and
22 I've obviously heard his voice at status conferences, so I just
23 wanted to clear up that I had been speaking to him otherwise.

24 THE COURT: OK. That's important. And I see
25 Mr. Celli nodding in agreement with what you just said. To be

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1 clear, though, you felt that not just from context but the
2 voice timbre; the nature of the voice appeared similar to you
3 from what you've heard in Court.

4 MS. KARAMIGIOS: Yes, your Honor.

5 THE COURT: Thank you for the clarification. Much
6 appreciated.

7 With that, does the government have a view on this
8 issue?

9 MS. KARAMIGIOS: With that, your Honor, the government
10 also takes the conduct very seriously. I'm in a bit of an
11 awkward position. And so the government isn't taking any
12 position on the whether bail should be revoked in deference to
13 pretrial services.

14 THE COURT: All right. Thank you for your candor
15 about that and for your intellectual honesty about the awkward
16 situation that you are placed in. May I ask you if anyone else
17 in your office has had time to consider the question.

18 MS. KARAMIGIOS: No, your Honor. Nobody else from my
19 office has weighed in on revocation.

20 THE COURT: Did you report to anyone else in your
21 office what you believed had happened?

22 MS. KARAMIGIOS: I did. I let my second seat, Ms.
23 Sasso, know and my supervisor Nadia Shihata.

24 THE COURT: OK. But I take it, at whatever level
25 within the office a decision like this would be made --

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1 presumably it might not be you, given that you're a percipient
2 witness to it -- nobody in the office has made a determination
3 as to what the office's view is on this.

4 MS. KARAMIGIOS: That's correct, your Honor.

5 THE COURT: Mr. Silverman, I have some questions that
6 I would like to put to the government, but I think probably the
7 most orderly thing to do is to hear your view.

8 MR. SILVERMAN: Thank you, your Honor. Obviously this
9 is unfortunate. I would note the context of it. There were a
10 lot of violations for a long time in this case, particularly if
11 you know that Mr. Celli was in jail for nearly five months.
12 Then you have seven violations very quickly over an 18-month
13 period. This is the first similar violation since August. The
14 October violation was for cocaine use. But it's been eight
15 months since something similar has happened. I think this is
16 pretty clearly the product of a serious mental health issue for
17 which Mr. Celli is receiving treatment, and much as we often
18 see with people who have alcohol and substance abuse
19 treatments, relapses are part of the process. That doesn't
20 excuse it. That doesn't make it OK. But it has been a long
21 time since something like this happened. And I think that
22 that's significant.

23 In terms of a remand right now, we're three weeks away
24 from a trial date that we expect to hold. Mr. Celli and I need
25 to work together. If he were to be remanded, it would be quite

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1 difficult with the present rules at the MCC, to work with him
2 to prepare for trial.

3 I also note that Mr. Celli has his second vaccine shot
4 appointment on May 7. Mr. Celli is obese, diabetic and has
5 HIV. It's very important, I believe, that he be fully
6 vaccinated by the time we're in the courtroom for trial.

7 I spoke with Ms. Karamigios about some of this on
8 Friday evening. And I learned more of this today. After I
9 spoke with Ms. Karamigios on Friday, I spoke -- Ms. Silverman
10 and I spoke with Mr. Celli and his mother. His mother is
11 listed at a second-party custodian on the bond and sometimes
12 they call it a third-party custodian, but she understands that
13 this has to be closely monitored and she is going to take
14 further responsibility for monitoring that as well.

15 But I would say, in summary, this is unfortunate, it's
16 something that shouldn't happen, and it has been a while, but I
17 think remand is a very extreme request.

18 I would also just note as a technical matter it's
19 unclear, it's always been unclear to me how much of this is
20 really a term of bail. I mean, I think certain things are
21 clear in the September 2020 conference that Judge Donnelly told
22 Mr. Celli not to call AUSA Kayla Bensing. Whether or not
23 that's a bail restriction is unclear to me. But we're not
24 arguing that this is something that should have happened or
25 that is OK to happen, but given the long period of time since

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1 it happened, given Mr. Celli's willingness to engage in
2 treatment that has been partly successful, and given the need
3 for us to work together as we approach a trial date, we
4 respectfully submit that remand would be inappropriate at this
5 time.

6 THE COURT: Apart from your -- thank you. Apart from
7 your obtaining the commitment, I gather, of Mr. Celli's mother
8 to be extra close in her supervision of Mr. Celli, is there any
9 steps short of remand that can be taken to minimize whatever
10 risk there is of continued noncompliance?

11 MR. SILVERMAN: I haven't spoken about this with the
12 government, and I haven't spoken about this with my client, but
13 it's certainly possible to add a phone-monitoring provision.
14 That's an ex-post-type thing. You know, it doesn't -- it's not
15 a preempt. I suppose that I could promise as counsel to work
16 with Mr. Celli's mother if it's his cellphone through a call
17 blocking so that the phone can't make phone calls to the United
18 States Attorney's Office. I can definitely investigate the
19 possibility of doing that with Mr. Celli's mother. And I think
20 that that's akin to, you know, somebody stopping drinking once
21 you get the alcohol out of the house and putting things in
22 place to protect people from the things that they do to harm
23 themselves that they don't necessarily want to do in their
24 best, most level kind of moments. So we can investigate that.

25 THE COURT: Sure. Thank you.

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1 All right. Thank you. Very helpful -- and
2 thoughtful, characteristically thoughtful response, which
3 wrought to bear certain facts that I hadn't quite focused on.
4 That was very useful. Thank you.

5 Let me ask government counsel -- and I appreciate the
6 government is not taking a position on the request --
7 Mr. Silverman raised a question that was on my mind as well.
8 Strictly speaking, there is a bail statute here that governs
9 remand. And the issue is whether there are conditions that can
10 guard against, reasonably guard against flight and protect the
11 community. This is not a presumption case. In other words,
12 the government bears the burden as to each element. Correct?

13 MS. KARAMIGIOS: Yes, your Honor.

14 THE COURT: And that means for danger to the community
15 it's not really by a preponderance but it's by clear and
16 convincing.

17 MS. KARAMIGIOS: Yes, your Honor.

18 THE COURT: Fully appreciating that the evidence here
19 may make a recurrence of this conduct something that could be
20 found by a preponderance or may be a clear and convincing
21 evidence, why does the recurrence of the conduct show either a
22 risk of flight or danger to the community, let alone by a
23 relevant standards?

24 MS. KARAMIGIOS: I think the argument would be, your
25 Honor, that his inability and unwillingness to comply with his

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1 conditions of release are evidence that he could be a danger to
2 the community and that his behavior might continue to escalate
3 to the point where we need to take actions in furtherance of
4 the violation.

5 THE COURT: May I ask you if -- I don't mean to pry
6 too deep into plea discussions or discussions about a deferred-
7 prosecution agreement -- was there any recent event or
8 provocation leading up to April 23rd that might have -- that
9 might explain what happened?

10 MS. KARAMIGIOS: Not to my knowledge, your Honor. We
11 have been in discussions about disposition of the case. No
12 formal decision has been made by my office yet.

13 THE COURT: Mr. Celli did not, in other words, at
14 least to your knowledge or from the U.S. Attorney's Office,
15 receive bad news.

16 MS. KARAMIGIOS: No, your Honor.

17 THE COURT: Mr. Silverman, can you orient what
18 happened on April 23rd in connection with any other event? I'm
19 trying to in effect understand, because I share your assessment
20 that Mr. Celli has made some form of progress during the course
21 of the prosecution, one of the questions is, how come this
22 lapse now?

23 MR. SILVERMAN: I think, your Honor, we're looking at
24 the stresses of leading up to a trial situation where --
25 Mr. Celli is reminding me and this is exactly where I'm

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1 going -- that he has had the medication increase, including his
2 anxiety medications, over the past ten days. So the meds have
3 been increased. And he has experienced -- he was already
4 dealing with mental health challenges, and now they're being
5 compounded, of which anxiety was an element. And now they're
6 being compounded by the anxiety that all people feel as they
7 approach a trial date. And it wasn't handled gracefully. But
8 I think that that's probably what led to this, is stress and
9 anxiety about going to trial. Mr. Celli has had his meds up.
10 Although he was not facing the increased medication at the time
11 that this happened, he is now taking more. And I don't -- I
12 did not use correct technical term, but, you know, finding the
13 right medication and combination is an ongoing work with
14 Mr. Celli and his doctors. And so I think that's a lot of
15 what's going on.

16 And as your Honor points out, I don't think anyone
17 seriously thinks that Mr. Celli is a risk of flight. He knew
18 on Friday that there was going to be a violation memo. He was
19 here on time today, in fact quite early. He has come to court
20 before safety and violation memos seeking remand. He has never
21 fled. As far as I know, there's nothing, been anything like
22 that.

23 In terms of danger, I do think your Honor is right to
24 contextualize. The danger here is nuisance danger. Mr. Celli,
25 as far as I know, has never done anything that's considered a

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1 proximate physical threat. And so that doesn't minimize --
2 that's not to minimize what happened. We acknowledge, this
3 could not have happened, this could not happen, it cannot
4 happen, ought not happen. But I think it's an interesting
5 point your Honor raises: What is danger under the statute? We
6 all sort of normally intuit it as risk of harm to others,
7 street violence or other things that people can do that are
8 dangerous. Here, the risk that we're talking about is nuisance
9 behavior. I do think that's an appropriate context. But we
10 acknowledge it should not happen and cannot continue.

11 THE COURT: Well, there are two categories of danger,
12 both of which go beyond nuisance. And one is that other
13 statements that fit within the statute may be made. And if
14 that were to happen, even if there was an intention to carry it
15 out, the threat itself is understandably identified as a crime.
16 It causes alarm, it causes disruption, it causes tumult.

17 The second danger would be the one that you've
18 identified, which is that lying behind a threat is a desire to
19 act on the threat, to carry it out. And I take your point
20 that -- I'll ask the government about this at this point --
21 that from your perspective, there's no evidence that suggested
22 a desire to actually carry out the stated threats in the
23 communications at issue in this case.

24 MR. SILVERMAN: Your Honor, I agree with the second
25 point. I would just point out, in terms of all the bail

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1 violations -- I was skimming through the prior memos on my
2 phone shortly before Court -- it would -- I'm not aware of
3 anything even approaching threat-level statements while on
4 bail. I think what's in the present report is that Mr. Celli
5 asked for a fax number. I don't have any reason -- and I say
6 this with complete honesty. I really have no reason to believe
7 that whatever he might have faxed would have been threatening
8 in nature.

9 And so I just don't see anything suggesting even a
10 possibility of that kind of a risk of danger, that he would
11 engage in conduct violative of 875(c).

12 THE COURT: Have you any insight as to what the facts
13 might have been that Mr. Celli had in mind?

14 MR. SILVERMAN: I may, your Honor, but I would feel --
15 it wasn't communicated, it was properly not communicated.
16 Based on my understanding of what it was, it would certainly
17 not have been in the nature of a violation of 875(c) or
18 anywhere near that. It would have been more in the nature of
19 things that have been submitted to this Court, both public a
20 under seal.

21 THE COURT: OK. And I take it understandably
22 Mr. Silverman, any knowledge you have is based on
23 attorney-client communications, and so I think what you're
24 trying to do is respect those communications while conveying to
25 me that any such communication would have been in the nature of

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1 relitigation of past civil events, or something of that --

2 MR. SILVERMAN: It would have been something -- yes,
3 your Honor. It would have been something of a nature that is
4 far from a threat.

5 THE COURT: OK.

6 Ms. Karamigios, is the government aware of any
7 evidence, beyond the face of the threats themselves, which is
8 not insubstantial, but is the government aware of any evidence
9 that would indicate an inclination to carry out a threat?

10 MS. KARAMIGIOS: No, your Honor. There is no evidence
11 that he, for example, got in the car and started driving
12 towards one of the judges' homes in this case. The only thing
13 that I could point to is that he did send an email saying
14 something along the lines of -- and this has been produced in
15 discovery -- making a threat and acting on it isn't frivolous,
16 or something along those lines. So he had threatened to act on
17 it, but we don't have affirmative evidence that he took steps
18 to act on it.

19 THE COURT: All right. Is there anything further that
20 you would like to, the government would like to bring to my
21 attention?

22 MS. KARAMIGIOS: No, your Honor. I would just note
23 that the phone restriction does sound appealing. There are
24 other people that he is not suppose be to be calling beyond the
25 United States Attorney's Office. And so to the extent that

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1 that could also apply to judges and clerk's offices, that would
2 be wise.

3 I'd also ask -- I don't know if counsel has any idea
4 about it at this point -- but if counseling could be increased,
5 just something to address the recent violation.

6 THE COURT: OK. That's helpful.

7 Look, I do think both of the things that AUSA
8 Karamigios has suggested are sensible. I will ask
9 Mr. Silverman in conjunction with the pretrial officer to take
10 steps to neutralize Mr. Celli's phone's ability to contact not
11 really the representatives of the U.S. Attorney's Office, but
12 if there are other people within the scope of the concern here,
13 including, for example, judges, I think that would be well
14 worth it. So I will ask, and I know that the pretrial officers
15 are on the phone, that steps be put in place to limit the
16 ability of Mr. Celli's phone to contact people, including the
17 prosecutors and judges. If there are others who are within
18 scope, Ms. Karamigios, I'd be happy to know, but I take it
19 that's really what you're concern was.

20 MS. KARAMIGIOS: Yes, and the Clerk's Office, your
21 Honor.

22 THE COURT: And the Clerk's Office. I will ask
23 Mr. Silverman and Ms. Karamigios to formulate the precise words
24 that capture this directive so as to make sure to take up the
25 names of the relevant parties, but I take it it would be three

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1 categories: judges, AUSAs, and the Clerk's Office.

2 I think that's well worth it. I think, Mr. Silverman,
3 your analogy to the alcohol context is right. It doesn't
4 prevent the problem from happening, but it makes it a little
5 harder to reach.

6 MR. SILVERMAN: Yes, your Honor. We will endeavor to
7 do it as quickly as possible.

8 THE COURT: And, look, the second thing that I will
9 ask is that the Pretrial Services explore whether there is
10 intensified counseling available that could be furnished to
11 Mr. Celli.

12 I can't at this point think of other steps that are
13 likely, nor have counsel identified, that are likely to
14 meaningfully reduce the risk of a recurrence of that behavior.
15 If, however, on reflection, because these events just happened,
16 anyone can think of any other steps, I'm more than happy to
17 consider them. But on the big picture, here is my assessment.
18 And, Mr. Celli, I'll ask you to take a look at me while I
19 speak.

20 What you did was gravely wrongful. Given the context
21 of this case, even an outreach to the prosecutor, somebody who
22 you've been prohibited from calling, is apt to cause alarm,
23 even if the words you chose were just words about using a fax
24 machine. For better or worse, you stand accused of making
25 death threats to federal judges. It's not a surprise that if

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1 somebody else that you were precluded from reaching out to then
2 received a prohibited communication from you, their fears,
3 understandably, would run towards the very worst of what you
4 might have in mind. So your behavior, in the context of what
5 you've been charged with, causes alarm. You can't do that.
6 And it's self-defeating to do it, too.

7 Right now, you have not been adjudicated guilty of the
8 offenses to which you have been charged. And I can't foresee
9 the future and I don't know the direction the case will go in.
10 I don't know whether a pretrial disposition will be reached. I
11 don't know if it was, what the terms was reached. I don't know
12 what the terms would be. And I don't know, if there is no
13 pretrial disposition reached, if you went to trial, what the
14 likelihood is that you would be found guilty. But I can say
15 this. If either by guilty plea or by conviction, you are
16 adjudicated guilty of the offense, one day I would be in the
17 position of having the duty to impose sentence on you. It's
18 something that I regrettably have to do a great deal in my line
19 of work. One of the things that the judge is always looking at
20 is the recent behavior of the defendant. The question in the
21 judge's mind is: Does he get it now? Has the arrest or the
22 charge been a shock to the system? Has it been a wake-up call?
23 Is the defendant now complying with the rule of law, or is the
24 defendant violated? And in that respect, when a defendant
25 repeatedly violates conditions of release, even if the

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1 violations themselves are not crimes, it's concerning. It
2 suggests that a defendant can't quite comply with the law. And
3 that makes you worry more about what bad things can happen if
4 the defendant were at liberty. That makes you think, as a
5 judge, maybe a somewhat longer sentence is needed to get a
6 message across to the defendant.

7 So ultimately, whatever led you to reach out to the
8 AUSA on Friday, it's ultimately self-defeating. If you find
9 yourself in the position of facing sentence, you want to be
10 able to persuade the Court that you are a more calm, compliant,
11 respectful-of-law person. And this is a bad walk-in. It
12 deserves you. So both because it's inherently an alarming
13 thing in the context of this case and because it's harmful to
14 you, please don't do it. You just can't do that.

15 And I will tell you as well that, although I'm denying
16 the request for you to be remanded, with each violation, the
17 argument for a remand becomes stronger.

18 I'm ultimately denying the application for remand, for
19 principally the reasons that Mr. Silverman articulately set
20 out. There is a mismatch between what you've done so far and
21 the requirements of the statute. There's no reason to think
22 that you're a risk of flight. On the contrary, I admire the
23 fact that you have time and again shown up and been on time.
24 That's not your problem. I don't find any basis to think that
25 you are a risk of flight.

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1 As to the danger to the community, that's a more
2 substantial question, because the threats are themselves a form
3 of danger, and the noncompliance now presents a little bit of
4 greater risk. With each time, with each additional violation,
5 the perceived risk grows that there might be more threats or
6 even possibly, although there's no specific evidence, that you
7 might actually one day take a step in the direction of acting
8 out those threats. I don't find that yet. But the
9 noncompliance is worrisome.

10 And I have to say, I was just on a personal level
11 disappointed because I have had been proud of you. You have
12 been pulling it together more during the time that you've been
13 before me than, I think, beforehand. And I think
14 Mr. Silverman's chronicling of the statistics reflected that
15 whatever the cause was, although you hadn't gotten it exactly
16 right, you've been better. And you should feel proud of that.
17 And that's the kind of look you want to be presenting.

18 So at the end of the day I can't find that there is
19 clear and convincing evidence that you were a danger to this
20 community. But you're closer to that than you were on
21 Thursday. And if you do something like this again you'll be
22 closer and you might cross that line. So don't do it.

23 Understood?

24 THE DEFENDANT: I appreciate what you just said, your
25 Honor. And like my letter would have been -- I apologize to

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1 Ms. Karamigios.

2 THE COURT: OK. Thank you. Look. Thank you. I'm
3 sure Ms. Karamigios appreciates the apology. So do I. The key
4 is to walk the talk.

5 OK. All right.

6 Look, although it isn't strictly relevant to the
7 standard of danger to the community, risk of flight, the very
8 common-sense arguments that Mr. Silverman makes also reinforce
9 the conclusion. I want you to get your second COVID shot. And
10 if the case is destined to go to trial, I want you to have easy
11 access with your counsel, who is the best thing to come into
12 your life in a long time. And so I want you to have those
13 advantages. And so while that's not driving the decision here,
14 it is consistent with the decision here.

15 OK, Mr. Celli?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. Let's not -- please don't put
18 me in a position of being in this situation again.

19 All right.

20 With that, I think that covers the agenda I had for
21 today. We have next week, next Wednesday, a walk-through, at
22 which point Mr. Smallman, my staff and I, will be learning
23 about the space in the Eastern District and in particular the
24 COVID restrictions that govern. We've been checking that out
25 in the context of the Southern District just to make sure we're

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1 issue-spotting matters large and small, including where people
2 stand, who can move where, use of common microphones, timing of
3 egress and entry into the courtrooms, and a whole host of
4 issues. And once we have left the Eastern District next
5 Wednesday I'll have a better understanding of all that, and
6 Mr. Smallman will be in touch with all of you to set up a date
7 that will be a final walk-through for all of you where we can
8 essentially work together to make sure that, collectively,
9 everyone understands what the COVID protocols in particular
10 are. And we'll use that as well as a final pretrial
11 conference. I would expect that at that conference I will be
12 engaging with you in resolving any issues with respect to the
13 evidentiary use of or arguments upon the civil case.

14 MS. KARAMIGIOS: Yes, your Honor.

15 THE COURT: With that, Ms. Karamigios, is there
16 anything else to raise today?

17 MS. KARAMIGIOS: No, your Honor.

18 THE COURT: Mr. Silverman?

19 MR. SILVERMAN: No, your Honor. Thank you.

20 THE COURT: And may I ask, Ms. Karamigios, again
21 without holding you to it and without prying, do you have a --
22 is there anything to report, even at the level of decision
23 date, when we will know whether this is -- whether a pretrial
24 disposition has been worked out?

25 MS. KARAMIGIOS: I would expect in the next few days,

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2 your Honor.

3 THE COURT: OK. Please let my chambers know one way
4 or the other. It affects a lot of things.

5 MS. KARAMIGIOS: Very good, your Honor.

6 THE COURT: Very well. We stand adjourned.

7 MS. KARAMIGIOS: Thank you, your Honor.

8 (Adjourned)

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